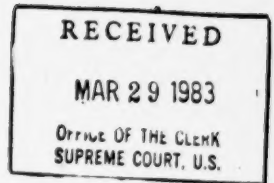


82-6783

IN THE SUPREME COURT OF THE UNITED
STATES



THOMAS M. SPENCE,

Appellant,

vs.

JOSEPH O. RODGERS, JR.,
JOHN W. WILLIAMS, JR., JOHN DOE,
JOE DOE, RICHARD DOE, FRANK DOE,
GEORGE F. COLEMAN, EDWARD M.
ROYALL, JOHN DOE, RICHARD DOE,
Jointly and/or Severally,

Appellees.

ON APPEAL FROM THE UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

JURISDICTIONAL STATEMENT

Thomas M. Spence, Pro Se
784 Jolly South, D-7
Clarkston, Georgia 30021
404/296-3697

IN THE SUPREME COURT OF THE UNITED
STATES

THOMAS M. SPENCE,

Appellant,

vs.

JOSEPH O. ROGERS, JR., JOHN W.
WILLIAMS, et al.,

Appellees.

JURISDICTIONAL STATEMENT

Appellant, THOMAS M. SPENCE, sets forth his jurisdictional statement as follows:

(a) The United States Court of Appeals for the Fourth Circuit set out its Unpublished Opinion on September 22, 1982, after which a Motion for New Trial was requested and denied on or about December 29, 1982. A copy of said Opinion is appended hereto.

(b) Appellant believes this Court to have jurisdiction over this matter due to the fact that a violation of due process of law has been upheld against this Appellant. Appellant further shows that he has never been allowed a day in court, such having been arbitrarily denied him.

Appellant brought this action against Appellees as a diversity tort claim based upon the bad faith (fraudulent) preparing, signing, and knowingly submitted false panel report to the full board and Supreme Court of South Carolina. It being unbeknown to the Supreme Court of the fraudulent contents of the report, the Supreme Court acted upon the report disbaring Appellant. Appellant originally filed his Complaint with the United States District Court, District of South Carolina and copies of his tort action filed therein are appended hereto. Appellant has never litigated before in Court regarding the Complaint filed herein, and has, thus, been denied "his day in Court." Appellant will abide by the laws of the State of South Carolina if afforded such a trial.

The Court below should have considered these cases under the Eire Doctrine. See Laffitte v. Tucker, 57 S.E.2d 255 wherein the Court stated:

"The doctrine of res judicata is not available as a bar to a subsequent action if the judgment in the former action was rendered because of a misconception of the remedy available or of the proper form of proceeding. In such situation, the plaintiff is entitled to bring the proper proceeding to enforce his cause of action." [at p.256].

This Appellant believes the Courts below failed to consider Appellant had grounds for a diversity tort claim against the

Appellees. It is also felt that the District Court incorrectly decided that Appellant's Complaint set out a collateral attack and is res judicata against Spence v. Nicholson, et al., Civil Action No. 76-1014 (1976); however, this action is directed only to the perpetrators and others of the alleged conspiracy and for injunctive relief and is in no way directed toward the panel report of the full board nor the Supreme Court of South Carolina, nor any other agencies, justices, panels, or others. A copy of the Complaint of Spence v. Nicholson, et al., is attached hereto solely to establish the difference of said actions.

The District Court ruled the Defendants were absolutely immune from acting in bad faith while carrying out their "quasi judicial duties." However, the District Court applied the wrong law. Appellant desires the South Carolina law applied under the Eire vs. Tompkins doctrine. See also, Long vs. Seabrook, 197 S.E.2d 659.

Appellant further believes the District Court's judgment was wrong in issuing a Restraining Order in that it based its judgment on briefed cases, which in each case did not constitute a cause of action to begin with. Further, the Appellant feels the Judge in the District Court should have disqualified himself from the matter due to the fact that his Clerk, John W. Williams, was a party to this action. Mr.

Williams was appointed Clerk of the United States District Court, Columbia, South Carolina, after the filing of this action. A motion for disqualification was filed immediately after notice to Appellant of his appointment and Appellant felt that Judge Hemphill's personal connections and relationship with his Clerk in carrying out their duties in the District Court should have prayed upon his conscience rendering it improper in his opinion for him to sit on this matter. 28-455 (4) U.S.C.A.

(c) Shouldn't Spence (Appellant) be allowed his "day in Court", with a trial by jury, under due process of law? Should not he be allowed to litigate this matter under the rights allowed to other citizens of the United States? Litigation, as set forth in the Special Deluxe Fifth Edition of Black's Law Dictionary, defines "litigation" as

"...a lawsuit. Legal action, including all proceedings therein. Contest in a court of law for the purpose of enforcing a right or seeking a remedy.

A judicial contest, judicial controversy, a suit at law."

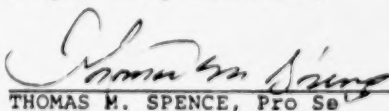
Should not the Judge in the United States District Court have disqualified himself from the matter because of his relationship with the Clerk of the Court, who is now a party to the action brought by Appellant?

(d) Since the rendering of the decisions set out above, Appellant has tried in every way to appeal the decision of the United States District Court, but has been denied due process and a trial up to and through his Appeal to the United States Court of Appeals. Appellant questions the ability of the Courts below to know that he is collaterally attacking anything unless he has actually been allowed to litigate the matter.

Appellant makes appeal to this Court under 28 U.S.C.S. §1253. Appended to this Jurisdictional Statement are copies of all pertinent documents, pleadings and opinions as have been handed down by the Courts below.

WHEREFORE, Appellant prays this Court will allow him to "have his day in Court" for damages sustained as a result of Defendants Rogers, Coleman, and Royall maliciously signing and issuing a fraudulent Panel Report to the Supreme Court of South Carolina. The South Carolina Supreme Court unbeknowing of the fraudulent contents acted upon the said Panel Report disbaring the Plaintiff.

Respectfully submitted,


THOMAS M. SPENCE, Pro Se

784 Jolly South, D-7
Clarkston, Georgia 30021
404/296-3697

82-6783

IN THE SUPREME COURT OF THE UNITED STATES

THOMAS M. SPENCE,

Petitioner,

v.

JOSEPH O. ROGERS, et al.

RECEIVED

MAY 7 1983

OFFICE OF THE CLERK
SUPREME COURT, U.S.

MOTION FOR LEAVE TO PROCEED IN FORMA PAUPERIS

The petitioner, Thomas M. Spence, asks leave to file the attached petition without prepayment of costs and to proceed in forma pauperis. Petitioner has previously been granted leave to so proceed in the U.S. Court of Appeals. Petitioner's affidavit in support of this motion is attached hereto.


THOMAS M. SPENCE

784 Jolly South
Suite D7
Clarkston, Georgia 30021
(404) 296-3697

A F F I D A V I T

RECEIVED

MAY 7 1983

OFFICE OF THE CLERK
SUPREME COURT, U.S.

I, Thomas M. Spence, being first duly sworn according to law, depose and say that I am the petitioner in the above-entitled case; that in support of my motion to proceed without being required to prepay fees, costs or give security therefor, I state that because of my poverty I am unable to pay the costs of said case or to give security therefor; and that I believe I am entitled to redress.

I further swear that the responses which I have made to the questions and instructions below relating to my ability to pay the cost of proceeding in this Court are true.

1. Are you presently employed? No.

I was last employed at a part-time Magistrate Judge in the County of DeKalb, Georgia from approximately October, 1980 until January 15, 1983. I received approximately \$ 950 per month in this position.

I am currently trying to practice law from my home, which is in an apartment located in DeKalb County, Georgia, but from which I have derived no income at this time.

2. Have you received within the past twelve months any income from a business, profession or other form of self-employment, or in the form of rent payments, interest, dividends or other source?

Yes. The only other income I had, in addition to the above, was from the private practice of law prior to becoming a part-time judge, since pursuant to the laws of DeKalb County, Georgia, a judge (whether full-time or part-time) is precluded from the private practice of law. My income during that time was approximately \$5,000.

Due to my inability to meet my expenses during the past 12 months, it has become necessary for me to file personal bankruptcy, which I am in the process of doing.

3. Do you own any cash or checking or savings account?

I have no cash; I have a checking account, which is currently overdrawn; and I have no savings account.

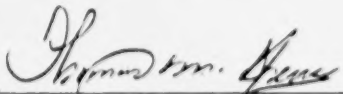
4. Do you own any real estate, stocks, bonds, notes, automobiles or other valuable property (excluding ordinary household furnishings and clothing)?

I have an automobile valued at approximately \$500.

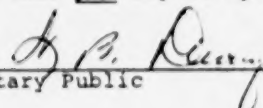
5. List the persons who are dependent upon you for support and state your relationship to those persons.

None.

I understand that a false statement or answer to any questions in this affidavit will subject me to penalties for perjury.


THOMAS M. SPENCE

Subscribed and sworn to before
me this 24 day of April, 1983.


Notary Public

UNPUBLISHED

**UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT**

No. 81-1956

Thomas M. Spence,

Appellant,

v.

Joseph O. Rodgers, Jr.,
John W. Williams, Jr.,
John Doe, John Doe,
Richard Doe, Frank Doe,
George F. Coleman,
Edward M. Royall, John
Doe, Richard Doe, jointly
and/or severally,

Appellees.

Appeal from the United States District Court for the District of
South Carolina, at Columbia. Robert W. Hemphill, District Judge.

Submitted: July 15, 1982

Decided: September 22, 1982

Before HAYNSWORTH, Senior Circuit Judge, PHILLIPS and ERVIN,
Circuit Judges.

(Thomas M. Spence, Appellant Pro Se. C. Tolbert Goolsby, Jr.,
and Kenneth P. Woodington, Attorney General's Office, for the
Appellees.)

PER CURIAM:

Appellant Thomas M. Spence is a Georgia attorney who had his certificate to practice law in the state of South Carolina revoked in 1975 by the South Carolina Supreme Court. After he unsuccessfully challenged the constitutionality of the disbarment proceedings, Spence v. Nicholson, C/A No. 76-1014 (D.S.C., Dec. 7, 1976), Spence invoked the district court's diversity jurisdiction and began two separate proceedings against these four named defendants. He alleged that one defendant fraudulently instituted the disbarment proceedings, and that the remaining named defendants fraudulently misrepresented evidence to the state Board of Commissioners on Grievances and Discipline and the state supreme court. In this appeal, Spence challenges the district court's determination that collateral estoppel bars prosecution of his claims of fraud.

We must first consider, however, Spence's challenge to the district court's failure to disqualify itself from considering this case. Approximately three weeks after the district court entered its memorandum opinion disposing of his claims, Spence submitted a letter to the court demanding that the court disqualify itself. The basis for disqualification was the fact that one of the defendants, John W. Williams, had been appointed clerk of the federal court for the district of South Carolina during the pendency of Spence's lawsuit.

Since Spence submitted no affidavit of bias or prejudice

as required by 28 U.S.C. § 144, we consider the motion under 28 U.S.C. § 455(a) (1982 Cum. Supp.). In determining whether disqualification is appropriate under this section, the test is whether "a reasonable person knowing all of the circumstances would be led to the conclusion that the judge's 'impartiality might reasonably be questioned.'" Smith v. Pepsico, Inc., 434 F. Supp. 524, 525 (S.D. Fla. 1977), quoting 28 U.S.C. § 455(a). We agree with the district court that the fact that the defendant Williams was appointed clerk of the court during the pendency of this suit is, standing alone, insufficient to require disqualification. Furthermore, the fact that the district court disposed of the claims on a procedural basis, a determination with which we agree, militates in favor of a finding that any error committed by the failure to disqualify was harmless error. See generally Barry v. United States, 528 F.2d 1094, 1100 (7th Cir.), cert. denied, 429 U.S. 826 (1976). We now turn our attention to the bar of collateral estoppel.

The defendant Williams instituted the disbarment proceedings by preferring charges of misconduct against Spence. The remaining named defendants comprised the hearing panel which heard evidence on the charges and made its report to the Board of Commissioners. The Board then considered the panel report, heard argument by Spence, and reported to the South Carolina Supreme Court. That court rejected Spence's motion for a continuance, and, in light of Spence's failure to appear before the court, made its

decision to disbar Spence based on the Board's report. Since nothing in the record before that court indicated any reason to reject the panel's and Board's findings of misconduct, the court adopted the factual findings as its own.

Although allegations of fraud can, in appropriate circumstances, act to avoid the res judicata effect of a prior judgment, see Commissioner v. Sunnen, 333 U.S. 591, 596 (1948), we do not think Spence's claims of fraud can operate to avoid the collateral estoppel effect of the prior determination that he committed certain acts of misconduct. Since it is not clear whether this fraud issue was actually litigated in the state proceedings, see Lowe v. Clayton, 264 S.C. 75, 212 S.E.2d 582 (1975), we cautiously apply collateral estoppel to this case.¹ However, we perceive the present action as nothing more than an indirect attack on the previous findings. Inasmuch as Spence gives no indication that the allegedly fraudulent acts were unknown to him at the time of the prior proceedings, we think collateral estoppel bars prosecution of the claims in this subsequent action.² In

1 We note that the district court decided, by implication, that South Carolina law would not require mutuality of parties to support application of the bar of collateral estoppel. See Parklane Hosiery Co. v. Shore, 439 U.S. 322, 326-27 (1979). Spence does not contest this determination on appeal.

2 Spence appeared at the panel hearing and before the Board. Furthermore, he does not claim that he lacked access to either the panel's report or the report of the Board. It would therefore strain the imagination of this Court to suppose that Spence was ignorant of the alleged fraudulent misrepresentations during the pendency of the state proceedings.

light of our disposition of this appeal on this basis, we see no necessity to address the district court's alternative finding that all the defendants are immune from a money judgment.

The final issue before this Court concerns the propriety of an injunction issued by the district court, at the request of the state Attorney General's Office, which "[perpetually enjoins Spence] from instituting or prosecuting, without prior leave of this Court, any other legal proceedings against the Supreme Court of South Carolina or against any justice, agency, board, panel, commissioner or officer thereof or against any complainant for any action taken with respect to the plaintiff's 1975 disbarment." Although injunctions such as this one are not looked upon with great favor, see Pavilonis v. King, 626 F.2d 1075 (1st Cir.), cert. denied, 449 U.S. 829 (1980), we agree that the district courts have power to issue such injunctions. Rudnicki v. McCormack, 210 F. Supp. 905, 908-912 (D.R.I. 1962), appeal dismissed, 372 U.S. 226 (1963). In this case, the district court found the filing of three separate lawsuits challenging the 1975 state proceedings to be frivolous and vexatious, and we do not believe the court abused its discretionary authority in entering the injunction. In conformity with the First Circuit, however, "[w]e would, of course, expect that, if a judge denied permission to file a complaint or additional papers, there would be a signed order to that effect." Pavilonis v. King, supra, at 1079.

Although the appellees have not moved for summary

affirmance, appellant Spence requests this Court to forego oral argument. We accept this request and affirm the judgment of the district court based on the briefs and records before this Court.

UNITED STATES COURT OF APPEALS

FOR THE FOURTH CIRCUIT

No. 81-1956

Thomas M. Spence,

Appellant,

vs.

Joseph O. Rodgers, Jr.,
John W. Williams, Jr., John
Doe, John Doe, Richard Doe,
Frank Doe, George F. Coleman,
Edward M. Royall, John Doe,
Richard Doe, jointly and/or
severally,

Appellees.

ORDER

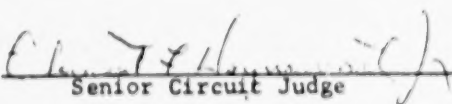
FILED

NOV 26 1982

U. S. Court of Appeals
Fourth Circuit

Upon consideration of the petition for rehearing
and with the concurrence of Judge Phillips and Judge Ervin,

IT IS ORDERED that the petition for rehearing be,
and it is hereby, denied.

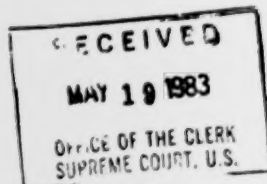

Senior Circuit Judge

November , 1982

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 81-1956

RECEIVED
JAN. 3, 1983
(Confirmed by Tel.)



THOMAS M. SPENCE,
Appellant,

vs.

JOSEPH O. RODGERS, JR., JOHN
W. WILLIAMS, JR., JOHN DOE,
JOHN DOE, RICHARD DOE, FRANK
DOE, GEORGE F. COLEMAN,
EDWARD M. ROYALL, JOHN DOE,
RICHARD DOE, Jointly and/or
Severally,

Appellees.

NOTICE OF APPEAL TO THE SUPREME COURT
OF THE UNITED STATES

Notice is hereby given that THOMAS M. SPENCE, the
named, hereby appeals to the Supreme Court of
es from the Order denying rehearing entered
on November 26, 1982.

appeal is taken pursuant to 28 U.S.C.A. §1254.
28th day of December, 1982.

P33 1542831

RECEIPT FOR CERTIFIED MAIL

NO POSTAGE NECESSARY IF MAILED IN THE UNITED STATES
NOT FOR INTERNATIONAL MAIL
(See Reverse)

U.S. MAIL
OFFICE OF THE CLERK
SUPREME COURT, U.S.

POSTAGE		1
OPTIONAL SERVICES RETURN RECEIPT SERVICE	CERTIFIED FEE	1
	SPECIAL DELIVERY	1
	RESTRICTED DELIVERY	1
	SHOW TO WHOM AND DATE DELIVERED	1
	SHOW TO WHOM DATE AND ADDRESS OF DELIVERY	1
TOTAL POSTAGE AND FEES	SHOW TO WHOM AND DATE DELIVERED WITH RETURN RECEIPT	1
	SHOW TO WHOM DATE AND ADDRESS OF DELIVERY WITH RETURN RECEIPT	1
	POSTMARK ON DATE	1

12/29/82

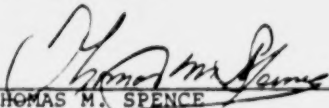
THOMAS M. SPENCE, *pro se*
Appellant

330 Church Street, Suite 201
Decatur, Georgia 30030
404/371-1040

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the above and foregoing Notice of Appeal to the Supreme Court of the United States was served on the Attorney General of the State of South Carolina, Post Office Box 11549, Columbia, South Carolina 29211, as attorneys for Appellees herein.

This 28th day of December, 1982.



THOMAS M. SPENCE

CHAPTER 10

DISQUALIFICATION OF JUDGES

1. THE RIGHT TO HAVE A JUDGE DISQUALIFIED*—The problem of substituting one judge for another in any given matter may arise in different ways. Occasionally, due to illness or other indisposition, a judge may be part way through a trial or nonjury hearing and be compelled to terminate the hearing, either temporarily or permanently. In nonjury cases, this is not normally a serious problem since the case can often be continued the necessary period. However, if there is death or long illness, there is a choice of starting over or bringing in another judge. This problem is considered in § 9.18.

Any justice or judge of the United States shall disqualify himself in any case in which he has a substantial interest, has been of counsel, is or has been a material witness, or is so related to or connected with any party or his attorney as to render it improper, in his opinion, for him to sit on the trial, appeal, or other proceeding therein. 28 USCS § 455.

A judge does not have a substantial interest under the foregoing provision because he was the United States attorney when the defendant was being prosecuted for a totally unrelated offense. *Gravenmier v United States* (1972, CA9 Cal) 469 F2d 66. Nor need he disqualify himself in a bank robbery case where he owned .0072 percent of the stock of the robbed bank. *United States v Ravich* (1970, CA2 NY) 421 F2d 1196, cert den 400 US 834, 27 L Ed 2d 66, 91 S Ct 69. Nor does he have any duty to disclose to the litigants the possibility that he has some slight interest in the case. *Kinnear-Weed Corp. v Humble Oil & Refining Co.* (1971, CA5 Tex) 441 F2d 631, cert den 404 US 941, 30 L Ed 2d 255, 92 S Ct 285, reh den 404 US 996, 30 L Ed 2d 549, 92 S Ct 532.

On the other hand, it is the duty, under this provision, of the judge to disqualify himself if he has been attorney for a litigant before him. *United States v Amerine* (1969, CA6 Ohio) 411 F2d 1130.

§ 10.2. SITUATIONS WHERE A JUDGE SHOULD DISQUALIFY HIMSELF*— There are many situations that arise wherein the judge is something more than a

40. Annotations:

Judge's interest in an official or representative capacity, or relationship of judge to one who is a party in an official or representative capacity, as disqualification. 10 ALR2d 1307.

Compelling assertedly disqualified judge to excuse self or to certify his disqualification by mandamus. 43 ALR2d 937.

Prohibition as appropriate remedy to prevent allegedly disqualified judge from proceeding with case. 92 ALR2d 306.

Intervenor's right to disqualify judge. 92 ALR2d 1110.

Disqualification of judge for having decided different case against litigant. 21 ALR3d 1369.

Disqualification of judge on ground of being a witness in the case. 22 ALR3d 1198.

Disqualification of judge for bias against counsel for litigant. 23 ALR3d 1416.

41. Annotations:

Relationship to attorney as disqualifying judge. 50 ALR2d 143.

Time for asserting disqualification of judge. 73 ALR2d 1238.

Disqualification of judge because of his or another's holding or owning stock in corporation involved in litigation. 25 ALR3d 1331.

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
COLUMBIA DIVISION

THOMAS M. SPENCE,
Plaintiff,

vs.

JOSEPH O. ROGERS, JR.,
JOHN W. WILLIAMS, et al.,

Defendants.

and

THOMAS M. SPENCE,
Plaintiff,

vs.

GEORGE F. COLEMAN, et al.,
Defendants.

CIVIL ACTION NOS. 80-1517-5
and 81-426-5

ORDER

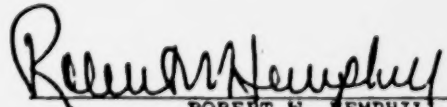
FILED
SEP-8 1981
JOHN W. WILLIAMS, CLERK
COLUMBIA, S. C.

This Court is in receipt of a letter from Thomas M. Spence making a demand for disqualification. He sets forth no proper grounds for any disqualification, the Court will consider his demand as a motion, the same is denied.

AND IT IS SO ORDERED.

September 3, 1981

Rock Hill, South Carolina


ROBERT W. HEMPHILL
Senior United States District Judge

TRUE COPY:

Text:

John W. Williams, Clerk


Deputy Clerk

CLERK'S OFFICE
UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT
UNITED STATES COURTHOUSE
TENTH & MAIN STREETS
RICHMOND, VIRGINIA
23210

WILLIAM K. SLATE, II
CLERK

TELEPHONE
(804) 771-2210
FTE 928-2210

March 1, 1982

Thomas M. Spence, Esq.
Suite 917
2025 Peachtree Road, NE
Atlanta, GA 30309

C. Tolbert Goodsby, Jr., Esq.
Kenneth P. Woodington, Esq.
Attorney General's Office
P.O. Box 11549
Columbia, SC 29211

Re: 81-1956, Thomas M. Spence vs. Joseph O. Rodgers, Jr.,
et al
(C/A 80-1517; 81-426-5)

INFORMAL BRIEF

Directions: Answer the following questions about the appeal to the best of your ability. Use additional sheets of paper if they are necessary. You need not limit your brief solely to this form but you should be certain that whatever you file answers the questions below. In either case, the Court prefers short and direct statements. You should return your original brief and one copy to the above address within 21 days of the date noted above and mail another copy to the opposing party..


- (1) Did the district court fail to consider important grounds for relief? If so, what grounds?
Yes, failed to consider that Appellant Spence had grounds for a diversity tort claim action against the Defendants.

- (2) Did the district court incorrectly decide the facts? If so, what facts?
Yes, incorrectly decided that Appellant's Complaint sets out a collateral attack, and is res-judicata as against Spence vs. Nicholson et al, Civil Action No. 76-1014 (1976)
(Continued on Page II)

- (3) Do you think the district court applied the wrong law? If so, what law do you want applied?
Yes, Appellant wants South Carolina Law applied under Eire vs. Tompkins Doctrine.

(Continued on Page III)

- (4) Do you feel that there are any other reasons why the district court's judgment was wrong? If so, what?
Yes, Judge Hemphill failed to confide in his conscience to disqualify himself. 28-455(4) U.S.C.A. Further issuing Restraining Order based upon Briefs in his Order when in each case held that no cause of action existed to begin with.
- (5) What action do you want the Court to take in this case?
To order Defendants to answer Appellant's Complaint and ordered that Appellant have his day in Court by jury trial. To transfer the case to another district or before a visiting Judge from another district other than the South Carolina district.
- (6) If you think the Court should hear oral argument in this case, why do you think so?
No.


Signature

- (2) The action Spence vs. Nicholson et al under 42-1983 U.S.C.A. consisted of claims for damages in violation of due process of law, conspiracy, injunctive relief restraining Nicholson et al from interfering with Plaintiff's right to practice law in the State of South Carolina (copy of Complaint and Exhibits attached hereto for reference to distinguish between the cases).

The present action before the Court is a diversity tort claim based only upon the bad faith (fraudulent) preparing, signing, and knowingly submitting a false panel report to the full board and the Supreme Court of South Carolina, the full board and the Supreme Court of South Carolina believing the fraudulent panel report to be true acting thereon causing damages to Appellant Spence. This action is in no way directed toward the full board nor the Supreme Court of South Carolina nor any other agencies, Justices, panels, commissioner of officers, the action is directed only to the perpetrators of the alleged fraud in filing a false report.

Further, this action is different from the Nicholson et al case in that it sues for:

- (1) Different thing (tort monetary damages) caused by fraud.
- (2) Different cause of action, being a diversity tort claim action and not being sued and brought under 42-1983 U.S.C.A. as in the Spence vs. Nicholson et al case.

Different persons as to Coleman and Royal who were not involved in the conspiracy and violators of due process of law in Spence vs. Nicholson et al.

The District Court ruled that the Defendants were absolutely immune from acting in bad faith while carrying out their "Quasi judicial duties."
Order August 19, 1981, Page 8, Line 3.

- (3) The District Court applied the wrong law. Appellant Spence in the present action before the Court through mistake attempted to exercise a right to which he was not entitled or made a choice of a supposedly remedy which never existed. The Appellant wants the South Carolina law applied under the Eire vs. Tompkins doctrine.

"Fact that a party through mistake attempts to exercise a right to which he is not entitled or has made choice of a supposed remedy which never existed, and pursued it until court adjudged that it never existed does not preclude him from afterward pursuing a remedy for relief to which in law and good conscience he is entitled.

"...there must be identity in thing sued for, identity of cause of action, identity of persons and parties to action and identity of quality in persons for or against whom claim is made." Laffitte v. Tucker, 57 S.E. 2d 255.

The District Court applied the wrong law in ruling that the Defendants were absolutely immune while carrying out their Quasi-judicial duties. The Appellant wants the South Carolina law applied.

"'Quasi-judicial duties' of officials are such as necessarily require exercise of reason in adaptation of means to an end, and discretion in determining how or whether act shall be done or the course pursued."

"Failure of public official to comply with laws governing and regulating his powers and duties may give rise to liability."

"Before recovery can be had in tort suit against public officials whose duties are discretionary, it must be shown that in performance of nonperformance of such duties, official was guilty of corruption, or bad faith, or influenced by malicious motives." Long v. Seabrook, 197 S.E. 2d 659. (Emphasis added.)

- (4) The District Court's judgment was wrong in issuing a Restraining Order in that it based its judgment on briefed cases in his Order which in each case did not constitute a cause of action to begin with.

Judge Hemphill's judgment was wrong in not confiding in his conscience concerning disqualification. He considered it proper to sit on matters in which his Clerk John W. Williams whom he appointed is a party to this action. He was appointed Clerk of the United States

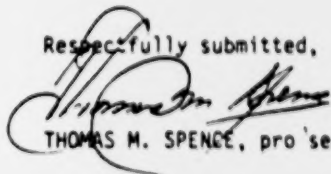
District Court, Columbia, South Carolina, after the filing of this action. The motion for disqualification was filed immediately after notice to Appellant of this appointment. The Appellant feels that Judge Hemphill's personal connections and relationship with his Clerk in carrying out their duties in the District Court should have prayed upon his conscience rendering it improper in his opinion for him to sit on this matter. 28-455 (4) U.S.C.A.

- (5) The Appellant respectfully requests the Court to order the Defendants to answer Appellant's Complaint and order that Appellant have his day in Court with trial by jury.

The Appellant respectfully request the Court to Order the case to be transferred to another district or before a visiting Judge from another district.

This 15th day of March, 1982.

Respectfully submitted,



THOMAS M. SPENCE, pro'se

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA

THOMAS M. SPENCE,

Plaintiff

Vs.

FRANCIS NICHOLSON, Judge,
of Greenwood, S. C.,
Individually, RICHARD
TOWNSEND, Attorney at Law,
Individually, JOSEPH O.
ROGERS, JR., Agent for the
State of South Carolina,
Individually, JOHN W. WILLIAMS,
Agent for the State of South
Carolina, Individually, JOHN
DOE, Agent for the State of
South Carolina, Individually,
RICHARD ROE, JOHN ROE,

Defendants

CIVIL ACTION # _____

COMPLAINT

The Plaintiff respectfully shows unto the Court that:

1.

The Plaintiff is a citizen and resident of the State of Georgia and the Defendants are citizens and residents of the State of South Carolina, Defendant John W. Williams is a resident of Columbia, S. C., and the amount in controversy exceeds \$10,000.00 exclusive of interest and costs.

II.

The Defendants Joseph O. Rogers, Jr., and John W. Williams, acting under color of State law of South Carolina deprived the Plaintiff of his privileges and immunities guaranteed to every citizen of the United States, whereby this Court also has jurisdiction under 42 U.S.C.A. §1983.

III.

The defendants, Judge Francis Nicholson, Richard Townsend on the 6th day of October, 1972 in the Chambers of said Judge in the Greenwood County Court House, Greenwood, South Carolina maliciously conspired to have the Plaintiff disbarred from the practice of law in South Carolina.

The Defendants knowingly developed false information concerning the settlement of an accident case to accuse Plaintiff of defrauding Calvin T. Anderson in two transactions of \$600.00

and \$1,500.00 back in 1969. They further developed false information that would accuse plaintiff with fraud concerning his business dealings and with stockholders in the manufacturing business, all of which they knew were false from their illegal investigation.

IV.

Ten months later on 10th day of July, 1973, as a result of their illegal acts, lies and gossip, they as joint conspirators had issued a Complaint signed and verified by Defendant John W. Williams, Secretary of the South Carolina Grievance Committee, as Complainant, who knew from his own knowledge the charges to be false and acted illegally in violation of Page #2, Section 7 (Complaint) of their rules of disbarment procedure. (He failed to appear and complain as Complainant, Page #2, Section 7, paragraph B of Rules of Disciplinary Procedure, marked Exhibit "A", attached hereto and made a part of this Complaint.)

V.

Three and one-half (3 1/2) months later on October 18th, 1973 Joseph O. Rogers, Jr. of Manning, S. C. was appointed as investigator by The Supreme Court of South Carolina, acting under the color of State Law to investigate numerous charges of fraud against Plaintiff concerning the estate of one Willie Pitts of Laurens County, South Carolina. Letter from the Defendant to the Plaintiff attached hereto marked Exhibit "B" and made a part of this Complaint.

VI.

Defendant Joseph O. Rogers, Jr. did investigate acting under color of State Law of South Carolina and found that all Plaintiff's transactions and settlement in matter of the Estate of Willie Pitts to be improper form and handled properly, as confirmed by letter from Honorable Hewlett Wasson, Judge of Probate to the Defendant, said letter attached hereto marked Exhibit "C" and made a part of this Complaint.

VII.

Eight months later on the 27th day of June, 1974 defendant Joseph O. Rogers, Jr. maliciously without cause did recommend to Defendant John W. Williams, Complainant and Secretary of the South Carolina Grievance & Discipline Committee,

Plaintiff with violation of Canon of Ethics concerning this matter, knowing these charges to be false. Defendant John W. Williams, Complainant in this matter, acting under color of State Law did personally file these charges illegally by signing the Complaint maliciously with intent to further damage Plaintiff and cause him to be disbarred. Defendant John W. Williams, Complainant in this matter maliciously failed to appear before the Hearing Panel, Page #2 under Section 7 - (b)(3) as required by their Rules on Disciplinary Procedure, wherefore plaintiff was prevented from cross-examining Complainant, violating his right to due process of Law.

VIII.

Defendant Joseph O. Rogers, Jr. was further appointed (acting under color of State Law) to act as Chairman of the three men hearing panel. The appointment was illegal and contrary to their rules and regulations of South Carolina Rules of Procedure in disbaring lawyers, as set out, Page #8, under Rule 31, paragraph B of Rules on Disciplinary Procedure attached hereto and marked Exhibit "A".

IX.

Throughout the two days hearing, which was set 12 months from the date of Complaint, Defendant Joseph O. Rogers, Jr. acting under color of State Law of South Carolina maliciously damaged Plaintiff by further depriving him of his rights under the Due Process Clause of the 14th Amendment of the Constitution of the United States. As Chairman of the Panel, he recommended that Plaintiff be disbarred from the practice of law. His recommendations were contrary to any of the evidence as shown in transcript of said hearings. He did not refer to the transcript or cite any testimony in the transcript to substantiate his reasons for recommending disbarment of Plaintiff. Consequently, the Plaintiff could not prepare a defense or explain his position within one hour as ordered by Complainant (Letter of Complainant attached hereto, marked Exhibit "D" and made a part of this Complaint).

X.

Defendant Joseph O. Rogers Jr.'s recommendations to disbar Plaintiff were arbitrarily unprecedented which deprived Plaintiff of equal protection of the laws and his rights as guaranteed under the 14th Amendment of the Constitution of the

XI.

The defendants claimed that the Plaintiff converted \$600.00 and \$1,500.00 from Calvin T. Anderson. The transcript of hearing clearly shows that the Plaintiff did not convert six hundred (\$600.00) dollars of Calvin T. Anderson's money nor held any monies in trust for him.

XII.

The transcript of Hearing clearly shows that the Plaintiff did not make any false representation to his client Calvin T. Anderson at any time during the four (4) years he represented him, nor to defraud him or gain \$1,500.00 personally as charged. The Plaintiff did not commit any actions in business which would justify his disbarment from the practice of Law as charged.

XIII.

The Defendants maliciously conspired to punish and violate Plaintiff's right in that Plaintiff prevailed in several law suits which concerned them personally, and other politicians throughout the State of South Carolina.

The Plaintiff has suffered great mental anguish as a result of his disbarment, physical pain, harassment, and lost sums of money from his business. Plaintiff incurred considerable expenses as a result of the Defendants' malicious actions in violating Plaintiff's rights in the disbarment of the Plaintiff from the practice of Law.

XIV.

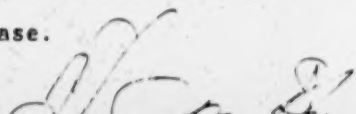
The Plaintiff demands trial by jury.

WHEREFORE, Plaintiff prays:

a.) For judgment against the Defendants jointly and severally for actual, special, and punitive damages in the amount of three million dollars (\$3,000,000), together with all costs of this action and reasonable attorneys fees.

b) For an Order of this Court restraining the Defendants from interfering with the Plaintiff's right to practice Law in the State of South Carolina.

c.) Any further relief which this Court may deem appropriate upon hearing the facts in the case.



THE ~~STATE~~ OF SOUTH CAROLINA
In The Supreme Court

RULE ON DISCIPLINARY PROCEDURE

(As amended by the Supreme Court on June 1, 1970, such amendment to become effective on September 1, 1970. Changes are indicated by underscoring under Rule 8.)

1. Creation of Board of Commissioners on Grievances and Discipline.

There is hereby created as Commissioners of this Court a Board of Commissioners on Grievances and Discipline. The said Board of Commissioners is empowered and charged to receive, entertain, inquire into, take proofs, make findings, and submit recommendations to this Court, as hereinafter provided:

(a) concerning complaints of misconduct, as hereinafter defined, on the part of any member of the bar of this state;

(b) concerning practices of any member of the bar of this state which tend to pollute or obstruct the administration of justice or to bring the courts or the legal profession into disrepute; and

(c) relating to petitions for reinstatement of the practice of law in this state.

2. Constitution, Appointment and Tenure of the Board of Commissioners on Grievances and Discipline.

The said Board of Commissioners shall be appointed by this court and shall consist of one (1) member of the bar of this state from each of the Judicial Circuits of the state. The term of office of each member of the said Board shall be three years, or until a successor has been appointed, and shall begin on the first day of October next following his or her appointment. Vacancy for any cause shall be promptly filled by appointment by this Court for the unexpired term. At the time of its initial appointments to membership, and each year thereafter, this Court shall designate one member as Chairman of the said Board of Commissioners and shall also designate a Secretary, who may, but need not, be a member of the said Board. Provided, however, should any member be engaged in a Panel or Panels at the expiration of his term, he shall continue to serve until completion of his work on such Panel or Panels as a member thereof despite the fact that his successor for all other purposes of the Board of Commissioners on Grievances and Discipline has been appointed and qualified.

3. Rule Exclusive.

All proceedings for the investigation of complaints and grievances involving alleged misconduct of any member of the bar of this state, all proceedings for the discipline of such members of the bar, and all proceedings for reinstatement to the practice of law in this state shall be brought, conducted and disposed of in accordance with the provisions of this rule.

4. Misconduct Defined.

Misconduct, as the term is used herein, means any one or more of the following:

(a) violation of any provision of the oath of office taken upon admission to the practice of law in this state;

(b) violation of any of the Canons of Professional Ethics as adopted by this court from time to time;

(c) commission of a crime involving moral turpitude;

(d) conduct tending to pollute or obstruct the administration of justice or to bring the courts or the legal profession into disrepute.

(e) emotional or mental stability so uncertain, as in the judgment of ordinary men, would render a person incapable of exercising such judgment and discretion as necessary for the protection of the rights of others and/or their property or interest in property.

5. Manner of Discipline.

Every member of the bar found guilty of misconduct shall be disciplined, in accordance with the seriousness of such misconduct, by:

- (a) permanent disbarment; or
- (b) suspension for an indefinite period from the office of attorney at law, subject to reinstatement only as hereinafter provided; or
- (c) public reprimand; or
- (d) private reprimand.

6. Effect of Discipline.

A person disbarred shall never be readmitted to the practice of law in this state.

A person who, having voluntarily surrendered his license to practice, has been thereafter reinstated in the manner hereinafter provided, or who, having been suspended for an indefinite period from the office of attorney at law, has been thereafter reinstated in the manner hereinafter provided, shall be disbarred upon being found guilty of subsequent misconduct.

A person who, having been publicly reprimanded for misconduct, is thereafter found guilty of subsequent misconduct, shall be suspended for an indefinite period from the office of attorney at law, or permanently disbarred, depending upon the seriousness of such misconduct.

7. Complaint.

A complaint, as the term is used herein, means a formal written complaint alleging misconduct on the part of a member of the Bar of this State, who shall be designated therein as the respondent. The complainant may be (1) any individual, firm or corporation; (2) the grievance committee of a regularly organized local bar association; or (3) a member of the Board of Commissioners as provided in Section 31 of this Rule. Such complaint shall not be accepted for filing unless it is:

- (a) verified under oath of the complainant; or
- (b) signed by one or more members in good standing of the Bar of this State, as counsel for the complainant. Signature by such counsel shall constitute a representation that he or they (1) have investigated the charges of misconduct alleged in the complaint, (2) believe reasonable cause exists to warrant a hearing on said complaint, and (3) have accepted the responsibility of prosecuting the complaint to conclusion. When the grievance committee of a regularly organized local bar association is the complainant, verification of the complaint shall be by the chairman of that committee.

By filing a Complaint with the Commission the Complainant places himself or herself under these Rules and submits himself or herself to the jurisdiction of the Court and the Board of Commissioners. Any Complainant who shall, without just cause or excuse, after Notice of a hearing duly given, fail to appear before the Panel at the time prescribed in said Notice, shall render himself or herself subject to taxation of costs incurred for such hearing and shall be deemed in contempt of this Court and punishable accordingly; and any Complainant found by the Board, or any Panel hearing a Complaint, to have filed a complaint without just cause or excuse or to be otherwise motivated by malice or reason contrary to the spirit of this Rule, shall likewise be in contempt of this Court and punishable accordingly. If such Complainant be a lawyer he shall be subject to Complaint against him for misconduct.

Whenever a Complaint charges a Respondent with misconduct because of practicing law when not capable of exercising the discretion and judgment necessary as provided by Sec. 4 (e), the Secretary shall forward with the copy of the Complaint mailed in accordance with this Rule, a Notice to Respondent that a Guardian ad Litem must be, within twenty days, appointed in his behalf by the Clerk of the Court on Petition by Respondent or someone in behalf of Respondent, and in the event Respondent fails to have a Guardian ad Litem so appointed, the Commission will petition the Clerk of this Court for such appointment.

8. Filing of Complaint; Procedure Thereon.

All complaints shall be filed in quadruplicate with the Secretary of the Board of Commissioners. If the said Board of Commissioners shall find that the complaint, upon its face, does not state facts sufficient to charge misconduct as herein defined, the said complaint shall be dismissed, and the Secretary of the Board shall so notify the complainant. Otherwise the said Secretary shall forthwith cause to be sent to the respondent by registered mail a copy of said complaint, together with a notice, signed by the said Secretary, requiring the respondent, within twenty (20) days after the mailing of such notice, to file with the Board, in quadruplicate, his answer to the complaint, and to serve a copy of said answer upon the complainant or his counsel of record. The answer shall be signed by the respondent or by his counsel, or by both, and may, but need not be, verified.

The Secretary shall also forward to the resident judge of the attorney a copy of said complaint and any answer filed by respondent or his counsel. Thereafter the Secretary shall notify the resident judge of the disposition by the Board. All such communications shall be confidential except as between the resident judge and the presiding judge of the Circuit or any county court judge within the Circuit.

9. Hearing by Panel of Three Commissioners.

After respondent's answer has been filed, or the time has expired within which respondent was required to file such answer, a formal hearing shall be held, upon reasonable notice to complainant and respondent or their counsel, by a panel of three (3) Commissioners appointed by the Chairman of the said Board of Commissioners, who shall designate one member of such panel as chairman of the panel. No member of such panel shall be a resident of the Judicial Circuit from which the complaint originated, or of the Judicial Circuit in which the respondent resides at the time of the filing of the complaint. The Chairman of the Board of Commissioners may, whenever he deems it advisable, request the Attorney General's Office to handle the prosecution of a claim before the hearing panel.

10. Duty of the Panel.

(a) If the panel shall find that the charges in the complaint are not supported by the evidence or do not merit the taking of disciplinary action, the complaint shall be dismissed; and such dismissal shall be reported to the Secretary of the Board of Commissioners, who shall thereupon so notify the respondent, the complainant, all counsel of record, and, when deemed appropriate, the local bar association or associations of the county or counties in which respondent resides and maintains an office, and of the county or counties from which the complaint arose.

(b) If the panel shall find and determine that the respondent is guilty of misconduct and that private reprimand should be administered, such panel shall administer such reprimand; and such action shall be reported to the Secretary of the Board of Commissioners, who shall thereupon so notify the same persons and organizations that would have been notified if the complaint had been dismissed by said panel.

(c) If the panel shall find and determine that the respondent is guilty of misconduct meriting public reprimand, indefinite suspension, or permanent disbarment, it shall make a certified report of the proceedings before it, including its findings of fact and recommendations, and shall file the same, together with a transcript of the testimony taken, such exhibits as may

have been in evidence before it, and an itemized statement of the actual and necessary expenses incurred by it in connection with such proceedings, with the Secretary of the Board of Commissioners.

11. Review by the Board of Commissioners; Private Reprimand.

Whenever the panel in its report shall have recommended disbarment, suspension, or public reprimand, the Board of Commissioners, through its Secretary, shall, before acting upon such report, notify the respondent and his counsel, if any, of the time and place at which the Board will consider the report for the purpose of determining its action thereon, such notice to be given not less than thirty days prior to such meeting. And the respondent and his counsel shall have the right, and shall be so informed in said notice, to appear before the Board at said meeting and thereupon to submit briefs and be heard in oral argument in opposition to the recommendations of the panel. Like notice shall be given, and like opportunity to submit briefs and be heard in oral argument in support of the recommendations of the panel shall be afforded, to the complainant and his counsel, if any, and to the Attorney General's office where that office has participated in the hearing before the panel.

Upon consideration of the report of the panel, the Board of Commissioners may:

- (a) refer the matter back to the panel for further hearing; or
- (b) order a further hearing before the said Board of Commissioners; or
- (c) proceed upon the certified report of the prior proceedings before the panel.

Upon its final review, the Board of Commissioners may either dismiss the complaint or find that the respondent is guilty of misconduct. If the Board shall determine that a private reprimand should be administered, it shall administer such reprimand. If the complaint is dismissed, or if a private reprimand is administered, the Secretary of the Board of Commissioners shall thereupon so notify the same persons and organizations that would have been notified if the complaint had been dismissed by the panel that heard the matter.

12. Public Reprimand; Suspension or Permanent Disbarment; Duty of Board after Review.

If the Board of Commissioners shall determine that the respondent is guilty of misconduct meriting public reprimand, indefinite suspension, or permanent disbarment, it shall make a final certified report of the proceedings before it, including its findings of fact and recommendations, and shall file the same, together with a transcript of the testimony taken, and such exhibits as may have been in evidence before it, and an itemized statement of the actual and necessary expenses incurred by the hearing panel and by the Board in connection with the proceeding, in the office of the Clerk of this Court; and the Secretary of the Board of Commissioners shall forthwith notify the respondent and the complainant, or their counsel, of such action, enclosing with such notice a copy of the Board's findings of fact and recommendations and a copy of the statement of expenses before mentioned.

13. Court to Order Respondent to Show Cause.

Upon the filing of such final report of the Board of Commissioners, this Court shall issue its order directed to the respondent, requiring him to show cause before this court at a time to be therein specified, but not less than forty (40) days after issuance of such order, why the report of the Board of Commissioners should not be confirmed and a disciplinary order entered. Copies of such order to show cause, certified by the Clerk of this Court, shall be served under his direction upon the respondent and the complainant, or their counsel, personally or by registered mail.

14. Return of Respondent; Briefs.

At least twenty (20) days before the date for showing cause stated in the order of this Court, the respondent shall make return to said order, setting forth his grounds of objection to the findings and recommendations of the Board of Commissioners and to the entry of a disciplinary order or to the confirmation of the report of said Board upon which the said order to show cause was issued, and shall file with the Clerk of this court the original and ten copies of such return, together with proof of service of the said return upon the Secretary of the Board of Commissioners, upon the complainant or his counsel, and upon the Attorney General of South Carolina, who shall thereafter participate in the proceeding in the public interest, whether or not he shall have been requested by the Chairman of the Board of Commissioners to participate in the earlier phases of the prosecution of the complaint. At the time of filing his return as aforesaid, the respondent shall also file with the Clerk of this Court the original and ten copies of a brief in support thereof, together with proof of service of said brief upon the Secretary of the Board of Commissioners, upon the complainant or his counsel, and upon the Attorney General.

15. Briefs on the Part of Complainant.

Within fifteen (15) days after the filing of respondent's brief, the Attorney General and counsel for the complainant shall, jointly or severally, file with the Clerk of this Court the original and ten copies of such brief or briefs as they may deem necessary in answer thereto, together with proof of service thereof upon respondent or his counsel of record and upon the Secretary of the Board of Commissioners.

16. Form of Return and Briefs.

The return and briefs may be either printed or typewritten, mimeographed or machine duplicated. If printed, they shall conform to the requirements of Rule 5 of this Court; if typewritten, mimeographed or machine duplicated, they shall conform to the requirements of Rule 6.

17. Review by Court.

Upon failure of the respondent to make return to the order to show cause within the time hereinbefore prescribed, or after consideration of the return and such briefs as may have been filed in support of and in opposition to the same, and after hearing argument, if this court shall desire to hear argument, thereabout, this court shall enter such order upon the matter as it may find proper, and may include in its order such provision for reimbursement of the actual and necessary expenses incurred by the hearing panel and by the Board of Commissioners as the court shall deem proper. Upon the entry of any disciplinary order pursuant to this rule, the Clerk of this Court shall mail certified copies thereof: to the respondent, at his last known address; to the complainant; to all counsel of record; to the Board of Commissioners; to the local bar association or associations in the county or counties in which the respondent resides and maintains an office, and in the county or counties from which the complaint originated; to the Clerk of the Court of Common Pleas in each of said counties; and to the Clerk of the District Court of the United States for the district in which said counties are located.

18. Proceedings Private Until Filed in Supreme Court.

Unless and until otherwise ordered by this court, all proceedings and documents relating to complaints and hearings thereon and to proceedings in connection therewith shall be private, unless the respondent shall in writing request that they be public. All complaints shall be captioned "In The Matter of _____" (Name of respondent to be inserted); and except for the official records of the Board and of this court, all references to the respondent throughout any disciplinary proceeding under this Rule shall be by the use of the term "Anonymous", unless and until this court shall otherwise order.

No persons whomsoever in any way connected with a matter before the Board, including witnesses, counsel, counsel's secretaries, Respondent,

Board Members, Board employees, reporters or investigators, shall mention the existence of any such proceeding, nor disclose any information pertaining thereto or discuss any testimony or evidence therein except to persons directly involved, and then only to such extent as necessary for a proper disposition of the matter. Provided, however, any proceeding before the Board may be made public upon written request of the Respondent. Violation of this provision shall be deemed contempt of this Court and punishable as such. All persons attending any proceedings or taking part in any matter hereunder shall be advised of this provision upon the commencement thereof. All records and correspondence held by members of the Board at the conclusion of their respective terms of office shall be carefully screened by them. They shall deliver all essential records and correspondence, so held, to the Secretary for filing with the permanent records of the Commission, and destroy all non-essential records having no permanent or continuing effect.

19. Quorum of Board or Hearing Panel.

A majority of the members of the Board of Commissioners or of a hearing panel shall constitute a quorum for all purposes; and the action of a majority of those present comprising such quorum shall be the action of the Board of Commissioners or of such hearing panel.

20. Service of Notices, Etc.

Wherever in this rule provision is made for the service of any notice, order, report or other paper or copy thereof upon any complainant or respondent or petitioner in connection with any proceeding involving a complaint or a petition for reinstatement, service may be made upon counsel of record for such complainant, respondent, or petitioner, either personally or by registered mail.

21. Clerk is Agent for Service of Notices on Non-resident Attorneys.

Service of any notice provided for in this rule upon any non-resident respondent who has been admitted to the practice of law pursuant to the rules of this court, or upon any resident respondent who, having been so admitted, subsequently becomes a non-resident or cannot be found at his usual abode or place of business in this state, may be made by the Secretary of the Board of Commissioners by leaving with the Clerk of this court a true and attested copy of such notice and any accompanying documents and by sending to the respondent, by registered mail, a like true and attested copy, with an endorsement thereon of the service upon the said Clerk, addressed to such respondent at his last known address. The postmaster's receipt for the payment of such registered postage shall be attached to and made a part of the return of service of such notice by the Secretary. The panel or Board of Commissioners or court before which there is pending any proceeding in which notice has been given as provided in this section may order such continuance as may be necessary to afford the respondent reasonable opportunity to appear and defend. The Clerk of this court shall keep a record of the day and hour of the service upon him of such notice and any accompanying documents.

22. Members of Board May Issue Subpoenas and Order Depositions Taken.

Each member of the Board of Commissioners shall have power to issue subpoenas and to administer oaths to witnesses. All such subpoenas shall be issued in the name and under the seal of this court, and shall be signed by a member of the Board of Commissioners. Any member of the Board of Commissioners may order the testimony of a witness to be taken by deposition within or without this State in the manner prescribed for the taking of depositions in civil action and such depositions may be used to the same extent as permitted in civil actions.

23. Effect of Refusal to Obey Subpoena or to Testify.

If any person subpoenaed as a witness pursuant to this rule shall refuse or neglect to obey said subpoena, to attend, to be sworn or to affirm, or to answer any proper question, he shall be deemed in contempt of this court and punishable accordingly.

24. Rules of Evidence to be Observed.

The rules of evidence shall be observed in the conduct of all hearings.

25. Docket of Complaints.

The Secretary of the Board of Commissioners shall keep a docket of each complaint and of all proceedings thereon, and the same shall be retained permanently as a part of the records of the Board of Commissioners.

26. When Petition for Reinstatement May be Filed.

No petition for reinstatement to the practice of law shall be filed within two years after the entry of an order indefinitely suspending the petitioner from the practice of law in this State, or within two years after the denial of a petition for reinstatement filed by such petitioner.

27. Contents of Petition for Reinstatement.

Subject to the foregoing restrictions, any person who has been indefinitely suspended from the practice of law and who wishes to be reinstated may file with the Clerk of this court his verified petition, and ten (10) copies thereof, setting forth:

(a) the date when indefinite suspension was ordered, and, if there was a reported opinion concerning the same, the volume and page of the official reports of this court where such opinion appears;

(b) the dates upon which any prior petitions for reinstatement were filed, denied or granted;

(c) the names of all persons and organizations, other than the petitioner and the Board of Commissioners, who were entitled under this Rule to receive from the Clerk of this court certified copies of the disciplinary order of this court resulting in the petitioner's suspension;

(d) the name of the county in which he resides at the time of the filing of the petition, and of each county in which he proposes to maintain an office if reinstated; and

(e) the facts upon which he relies to establish by clear and convincing proof that he has rehabilitated himself.

28. Petition Referred to Committee on Character and Fitness.

Unless the petition for reinstatement be summarily denied for insufficiency in form or substance, the Clerk of this court shall forward five (5) copies thereof to the Secretary of the Committee on Character and Fitness appointed under the rules of this court governing admission of persons to the practice of law in this State; and such petition shall be deemed to be referred, without court order, to said Committee.

29. Action by Committee on Character and Fitness.

The Committee on Character and Fitness shall, with all convenient dispatch, proceed to hold a hearing or hearings, take evidence concerning petitioner's character and his claim of rehabilitation, and report to this court the proceedings had before said Committee, together with the Committee's findings of fact and recommendations. Reasonable notice of all such hearings before the Committee shall be given to the petitioner or his counsel and to the President of the local bar association or associations in the county or counties in which the petitioner resides and in which he proposes to maintain an office in the event of his reinstatement. Such hearings may, in the discretion of the Committee, be public, and shall be public if the petitioner so requests in writing. Any interested person, any member of the bar, and any representative of the South Carolina Bar Association or of any local bar association may appear before the committee in support of, or in opposition to, the petition.

30. Committee's Report to be Filed; Procedure Thereupon.

The report of the Committee on Character and Fitness, and six (6) copies of the Committee's findings of fact and recommendations, shall be filed in the office of the Clerk of this court, who shall thereupon notify petitioner or his counsel of such filing and shall with such notice enclose a copy of the Committee's findings of fact and recommendations. If the Committee shall have recommended denial of the petition, the petitioner shall have ten (10) days from the date of his receipt of notice thereof from the Clerk within which to file with the said Clerk objections to the report and brief in support of such objections, together with five copies of such objections and brief; but no oral argument will be heard thereon. Upon consideration of the Committee's report and of such objections and brief as may have been filed by the petitioner concerning the same, the court shall enter such order as it may deem appropriate, and may include in such order such provision for reimbursement of the actual and necessary expenses incurred in connection with the proceedings as shall appear just and proper.

31. Investigation at Instance of Chairman; Procedure Thereunder.

(a) Whenever, from sources deemed by him reliable, the chairman of the Commission learns of an attorney (who is licensed to practice in South Carolina) engaging in practices in violation of his duty as such attorney, and the Chairman comes to the conclusion that an investigation should be made, he shall designate one member of the Commission to act as an investigator. The member so designated shall investigate these reported violations of duty, and for this purpose he may call to his assistance such public investigating agencies as he may think proper. After making such investigation, should the investigator come to the conclusion that a complaint (as described in the section 7 hereof) should be made against the attorney investigated, he shall file such in his official capacity and be responsible for the prosecution thereof to a conclusion.

✓ (b) When a member of the Commission shall have been selected to investigate the conduct of a particular member of the bar, he shall thereafter be disqualified to act as a member of the Commission insofar as such conduct of said member of the bar is concerned, otherwise than as such investigator and prosecutor as above set out.

✓ 32. Rule to be Liberally Construed.

The process and procedure under this rule shall be as summary as reasonably may be. Amendments to any complaint, notice, answer, objection, return, report or order, may be made at any time prior to final order of the court. Any party affected by such amendment shall be given reasonable opportunity to meet any new matter presented thereby. No investigation or procedure shall be held to be invalid by reason of any nonprejudicial irregularity or for any error not resulting in a miscarriage of justice. This rule shall be liberally construed for the protection of the public, the courts, and the legal profession, and shall apply to all pending complaints, investigations and petitions whether the conduct involved occurred prior or subsequent to the effective date of this rule. To the extent that application of this rule to such pending proceedings may not be practicable, the procedure in force at the time this rule became effective shall continue to apply.

Every communication, whether oral or written, made by or on behalf of any complainant to the Board of Commissioners or any hearing panel or member thereof, pursuant to this Rule, whether by way of complaint or testimony, shall be privileged; and no action or proceeding, civil or criminal, shall lie against any such person, firm or corporation by or on whose behalf such communication shall have been made, by reason thereof.

33. The Board of Commissioners is empowered to adopt rules and regulations not inconsistent with this rule.

. ROGERS, RIGGS & RICKENBAKER

ATTORNEYS AT LAW
MANNING, SOUTH CAROLINA 29102

23 WEST BOYCE ST
MANNING, S. C.
TELEPHONE 438-8444
120 NORTH MAIN ST
SUMTER, S. C.
TELEPHONE 772-814

JOSEPH O ROGERS JR
MARION S RIGGS
D GENE RICKENBAKER

October 18, 1973

PERSONAL AND CONFIDENTIAL

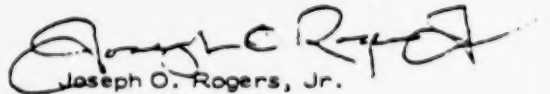
Mr. Thomas M. Spence
Attorney at Law
462 East Main Street
Laurens, South Carolina

Dear Mr. Spence:

A complaint filed against you before the Board of Commissioners on Grievance and Discipline has been referred to me for investigation. It stems from your handling of the claim of one Alfred Pitts, Jr. in the Estate of Willie Pitts.

I would be glad for you to call me and set a date when you can come to Manning to go over this matter with me so that I may make a report back to the Board.

Yours very truly,


Joseph O. Rogers, Jr.

JOR:nsc

LAURENS COUNTY

Laurens, South Carolina

October 26, 1973

J. HEVLETT WASSON
JUDGE OF PROBATE

Hon. Joseph O. Rogers, Jr.
Rogers, Riggs & Makenbaker
Attorneys at Law
Kanning, South Carolina 29102

Re: Willie Pitts Estate
Robert L. Gray, Executor
Estate File 832, Pkg. 9

Dear Mr. Rogers:

The above captioned estate was administered in this court by Mr. Robert L. Gray, a local attorney, the executor. Under the terms of the will of the deceased, Mr. Gray was the sole beneficiary; however, during the course of the administration, Hon. Thomas N. Spence, a local attorney was hired by one Alfred Pitts, Jr. to recover the proceeds of the estate. As a result of the efforts of Attorney Spence, approximately \$9,759.04 was recovered. On April 27, 1970, the executor filed his first and final return which was approved by Mr. Alfred Pitts, Jr. and by Mr. Thomas N. Spence, attorney for Mr. Alfred Pitts, Jr. The return shows that Mr. Spence was paid \$3,400 and Alfred Pitts, Jr. received \$6,359.04. The estate was properly administered so far as this Court is able to determine. Mr. Alfred Pitts, Jr. approved all transactions and the executor was discharged. Under the circumstances under which Mr. Spence rendered his services, it is my opinion that his fee was most reasonable.

Should you need additional information, please let me know.

Yours truly,

J. Hewlett Wasson
J. Hewlett Wasson
Judge of Probate

JHW/bdw

CC: Hon. Thomas N. Spence
Attorney at Law
Laurens, South Carolina



J. HEWLETTE WASSON
JUDGE OF PROBATE

LAURENS COUNTY

Laurens, South Carolina

Sept. 15, 1975

THIS IS TO CERTIFY: That Mr. Thomas M. Spence was engaged in the practice of law in the City of Laurens, Laurens County, South Carolina, and from time practiced in this court.

Mr. Spence proved to be efficient and capable in his work, prepared his pleadings well and based upon my knowledge and observations proved himself as one who put forth sufficient effort to represent his client properly.

Only one client ever made any complaint to this court relative to Mr. Spence's work. All other parties, so far as I know, were completely satisfied. The party who made his complaint was Mr. Alfred Pitts and this complaint was made after the complainant approved all estate transactions on the estate of Willie Pitts, the decedent; the complaint having been made a long period of time after closing or filing the final estate return. The transactions relative to this estate are fully covered in my letter dated Oct. 26, 1973, to Mr. Joseph H. Rogers, Jr. and are reaffirmed in this letter. Since the final return was approved by Mr. Alfred Pitts this court discharged the executor. Why the complainant decided to file a complaint on the estate after approving the estate transactions and after a long period of time was never understood by the court.

Additional information will be furnished upon request.

Respectfully,

J. Hewlette Wasson
J. Hewlette Wasson
Attorney at Law



The Supreme Court of South Carolina
THE BOARD OF COMMISSIONERS ON GRIEVANCES AND DISCIPLINE

JOHN W. WILLIAMS, JR.
ADMINISTRATIVE ASSISTANT
779-4788

1809 ST. JULIAN PLACE
COLUMBIA, S. C. 29204

March 10, 1975

PERSONAL & CONFIDENTIAL

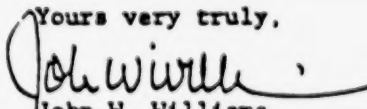
Mr. Thomas M. Spence
Attorney at Law
Post Office Box 145
Homer, Georgia 30457

In the Matter of: John W. Williams, Jr., Secretary of
The Board of Commissioners on Grievances
and Discipline, Complainant, vs.
Thomas M. Spence, Respondent.

Dear Mr. Spence:

The Panel has decided to recommend disbarment in your case. The Panel Report will be sent to you in the immediate future. This case will be heard before the full Board at its meeting in the Supreme Court Building on Friday, April 11, 1975, at 12:00 Noon. You will have one hour in which to appear in opposition to the Panel findings and you may file any briefs or memorandum as you see fit.

Yours very truly,


John W. Williams

CAS

cc: Panel Members
Mr. A. Camden Lewis
No counsel of record

BY REGISTERED MAIL

RECEIVED 9:15
3NF

MAR 22 1975

S.C. SUPREME COURT

The Respondent appeared before the full board at the designated time for one (1) hour without benefit of panel report or transcript of panel hearing.

Respondent's request at hearing for copy of transcript is omitted from the record, however, Mr. Lewis, Assistant Attorney General's refusal for Respondent to receive a copy of transcript was not omitted.

Copy of transcript page attached hereto.

TR 34-22, 23

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

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)

A F F I D A V I T

BEFORE ME PERSONALLY APPEARED Tom Turnipseed, who, being first duly sworn, deposes and says:

I have done extensive research into the disbarment proceedings of Thomas Spence, who was ordered disbarred by the South Carolina Supreme Court in June of 1975. Such research reveals serious questions concerning a lack of procedural due process in Mr. Spence's disbarment proceedings. The most questionable procedure occurred when the South Carolina Supreme Court ordered Mr. Spence disbarred, despite his being unable to appear before them in his own behalf due to illness. It appeared to be properly and timely brought to the Court's attention by motion, accompanied by a Doctor's Affidavit. This, coupled with Mr. Spence's lack of counsel due to his financial condition, certainly raises grave questions as to whether or not he received proper procedural process.

I have also had certain confidential conversation with principals involved in Mr. Spence's proceedings before the Grievance Committee of the South Carolina Bar Association which further point to possible failure to meet the requirements of procedural due process. Also, I cannot and will not reveal the source. A person involved in Mr. Spence's proceedings told me that "If Mr. Spence had been represented by a good Attorney, disbarment would have not been recommended".

Finally, my personal relationship with Mr. Spence from his activities in behalf of the Presidential candidacy of George Wallace when I was Governor Wallace's National Campaign Director from 1967 through 1971, to my conversations with Mr. Spence in looking into his disbarment proceedings has found him to be a completely honest and open individual in all of his dealings with me. His greatest shortcomings in attempting to defend himself in the above proceedings have been his openness and his inability

1 MR. LEWIS: Because he, sir, would like
2 little clarification on the objection question. I
3 understand he hasn't waived any of these objections or
4 now on any of the positions that he has taken.

5 MR. ROGERS: Yes, sir.

6 MR. LEWIS: However, during the course of the
7 proceedings there will be sometimes when he should object
8 and then later preserve them, like objecting on --

9 MR. ROGERS: Ho, sir. From an evidentiary
10 standpoint, of course, that's not what we are talking about.
11 We say that he may proceed in this hearing today without
12 waiving anything. In other words, if some court were to
13 decide later on that we had made a mistake in ruling that
14 his question of jurisdiction was improperly ruled, then
15 improvidently overruled, then the whole thing would be a
16 nullity.

17 MR. LEWIS: We understand that.

18 MR. ROGERS: If he is entitled to a continuance
19 we don't want that question to have been foreclosed by
20 having him to agree to -- We will follow the rules of
21 evidence as we go through the trial.

22 MR. LEWIS: We would not agree that he would be
23 entitled to a transcript of the proceedings.

24 MR. ROGERS: That's all right. I told you that
25 I don't know about that, we will have to get a ruling with

to obtain adequate counsel.

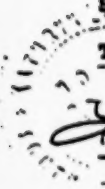
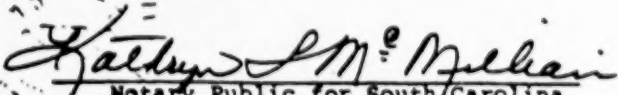
TURNIPSEED & POAG

By:


Tom Turnipseed

SWORN TO AND SUBSCRIBED BEFORE ME

This 10th day of September, 1975.



Notary Public for South Carolina

My Commission Expires: 11-5-80

August 28, 1981

Robert W. Hemphill, Judge
United States District Court
Columbia, South Carolina

CERTIFIED MAIL RETURN RECEIPT REQUESTED

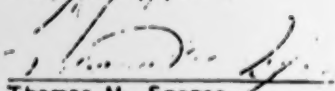
Dear Judge Hemphill:

Please take notice that subsequent to the filing of the cases of Thomas M. Spence Vs. Joseph O. Rogers, Jr., John W. Williams et al NO. 80-1517-6, Thomas M. Spence Vs. George F. Coleman, et al NO. 81-426-5, and after naming John W. Williams a defendant in case NO. 80-1517-6 your court presided over by you as Senior Judge you participated in appointing John W. Williams one of the defendants as clerk of the United States District Court, Columbia South Carolina. Further knowing that John W. Williams clerk of the Court was a defendant you failed to disqualify yourself in the cases which rulings directly affected John W. Williams personally.

Demand is made upon you to set aside and vacate your order dated August 18, 1981 and thereafter to immediately disqualify yourself. After said action is taken you should refer any decision and ruling to a judge outside of your district.

Please govern yourself accordingly.

Respectfully, yours,


Thomas M. Spence

cc:

The Court Executive,
United States Court of Appeals
Richmond, Virginia